Supreme Court of the United States.

ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of THE NEW YORK CLEARING HOUSE BUILDING COMPANY, plaintiff in error,

AGAINST

EDWARD P. BARKER, THEODORE SUTRO and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York.

No. 51
October Term, 1900.
(Taxes of 1896.)

BRIEF,
for plaintiff in error.

Upon July 16, 1896, a writ of *certiorari* was duly sued out in the New York Supreme Court pursuant to the Laws of New York of 1880, Chap. 269, and the Consolidation Act (Laws of 1882 Chap. 410, Sec. 821), by the New York Clearing House Building Company, to review the action of the Commissioners of Taxes and Assessments of the City and County of New York in assessing the relator upon its *personal property* (p. 28) for the year 1896, at the sum of $165,999. At the Special Term the writ was dismissed (p. 29; 23 Misc., 192). The opinion of the Court is at pp. 30-33. The relator appealed (pp. 29, 30) to the Appellate Division of the Supreme Court which affirmed the judgment of the Special Term without opinion (p. 33; 31 App. Div., 315). The relator then appealed to the Court of Appeals (p. 34) which again affirmed the judgment without opinion (p. 2; 158 N. Y., 709). The relator, thereupon, sued out this writ of error (pp. 35-37).

STATEMENT.

Pursuant to law, the relator duly filed with the Commissioners a Statement showing its condition for the purpose of assessment for taxation upon its capital stock for the year 1896 (pp. 9, 10, 18, 21, 22). This showed that the relator had personal property amounting to $130,049.02, and that its indebtedness amounted to $329,050.28. The relator was entitled by law to have those debts deducted from any assessment against it for personal property (People *ex rel.* Second Ave. Railroad Co. vs. Barker, 141 N. Y., 196; People *ex rel.* Cornell Steamboat Co. vs. Dederick, 161 N. Y., 195). The relator's debts, accordingly, exceeded the total amount of its *personal* property by the sum of $199,001.26.

The difference between the relator and the Commissioners arose by reason of the ownership by the relator of a certain parcel of real estate. Under the statutory provision requiring that they assess the same "at its full and true value" (1 R. S., 393, Sec. 17; 9th Ed., 1685; *infra*, p. 11), or in the terms of the Consolidation Act "the sum for which such property under ordinary circumstances would sell" (Laws of 1882, Ch. 410, Sec. 814; *infra*, p. 11), the Commissioners had already assessed this parcel of real estate for the year 1896 at $600,000 (pp. 6, 9, 11, 13). In the aforesaid Statement for the purpose of assessment, the relator stated that sum—$600,000—as the value of the real estate in question (pp. 9, 11, 22, 24).

The Commissioners disregarded this statement, and also the fact that they had just found the "full and true value" (1 R. S., 393, Sec. 17; 9th Ed., 1685)—"the sum for which such property under "ordinary circumstances would sell" (Consolidation Act, Sec. 814)—of this parcel of real estate to be $600,000, and without any reason therefor which appears in the return, found that its "actual value" was its cost to the relator, namely, $965,000 (pp. 19, 20). The Commissioners were thus in the position of finding that the "full and true value" (1 R. S., 393, Sec. 17; 9th Ed., 1685) of this real estate was $600,000, but that its "actual value" (pp. 19, 20; Laws of 1857, Chap. 456, Sec. 3) was $965,000. The difference between these sums was $365,000. From this the Commissioners deducted the balance of the relator's indebtedness over and above the amount of its personal property as above stated, namely, $199,001. The remainder was $165,999. The Commissioners assessed the relator in that amount upon its "taxable *personal property* in this city" (p. 28).

Statement.

The case arose under the statutes prior to the present Tax Law (Laws of 1896, Ch. 908). The action of the Commissioners was based upon the claim that real property owned by corporations is assessable differently from that owned by individuals. The statute upon which this claim rests (Laws of 1857, Ch. 456, Sec. 3, *infra*, p. 11), provides that "the capital stock of every company liable to "taxation, except such part of it as shall have been excepted in the "assessment roll, or as shall have been exempted by law, together "with its surplus profits or reserve funds exceeding ten per cent of "its capital, after deducting the assessed value of its real estate, and "all shares of stock in other corporations, actually owned by such "company, which are taxable upon their capital stock under the "laws of this state, shall be assessed at its actual value, and taxed in "the same manner as the other personal and real estate of the "county."

It is settled that this is not a franchise tax but purely a tax upon the property of a corporation exclusive of its franchises (People *ex rel.* Union Trust Co. vs. Coleman, 126 N. Y., 433; People *ex rel.* Manhattan Co. vs. Barker, 146 N. Y., 304, 312; s. c., 152 N. Y., 417, 453). It is also settled that the "capital stock" thus taxed is the aggregate property of the company, less the deductions allowed, and not the share stock of the company (Peo. *ex rel.* Union Trust Co. vs. Coleman, 126 N. Y., 433). The tax is under New York practice and in manner or form a tax upon personal property (p. 28).

An individual who owns real estate is, of course, assessable upon the same merely as real estate (1 R. S. 389; 9th Ed. 1680), but the claim of the Commissioners is that a corporation owning the same real estate is assessable thereon not merely as real estate but also upon any margin of difference between the assessed and the actual value of such real estate as *personal property*. The relator claimed in its petition for the writ of *certiorari* (p. 7) that this construction of the statute was contrary to the Constitution because it denied to the relator the equal protection of the laws, and it has constantly insisted upon that claim.

Assignment of Errors.

The record (p. 39) contains a full assignment of errors as follows :

I. The court erred in holding and deciding that the relator was not entitled to the remedy and relief prayed for in its petition and in affirming the order of the supreme court denying the prayer of said petition and dismissing the writ of *certiorari* theretofore issued pursuant to said petition.

II. The court erred in not ordering and adjudging that the order of the supreme court denying the prayer of the petition and dismissing the writ of *certiorari* be reversed, and that the prayer of said petition be granted and the assessment therein specified be stricken from the roll.

III. The court erred in denying to the relator the rights claimed by it in its said petition under the fourteenth amendment to the Constitution of the United States and in denying to the relator any relief on that ground.

IV. The court erred in not holding and adjudging that the assessment set forth in the relator's petition was contrary to the provision of the fourteenth amendment to the Constitution of the United States securing to the relator the equal protection of the laws, and that the relator was entitled, upon that ground, to judgment striking said assessment from the roll.

V. The court erred in deciding in favor of the validity of the statutes of the State of New York and the authority exercised under said statutes pursuant to which the assessment specified in the relator's petition was imposed, notwithstanding that their validity was drawn in question on the ground of their being repugnant to the Constitution of the United States.

FIRST.

The action of the Commissioners subjects the relator to a rule of taxation more onerous than that applying to an individual owning the same property.

It is settled that the tax imposed upon corporations by Chapter 456 of the Laws of 1857, is a tax upon their property exclusive of their franchises—the franchises are not the subject of taxation (People *ex rel.* Union Trust Co. vs. Coleman, 126 N. Y. 433; People *ex rel.* Manhattan Co. vs. Barker, 146 N. Y., 304, 312, s. c. 152 N. Y. 417, 453). In the case of individuals, the ownership of real estate subjects the owner simply to taxation upon the real estate (1 R. S. 389, 9th Ed. 1680). The present claim is that the statute in question subjects corporations which own real estate not only to taxation upon the real estate as such, but also to taxation upon a part of its value as *personal* property.

If this be so, it is obvious that an individual who owns real estate is subject to one rule of taxation, while a corporation which owns precisely similar real estate is subjected, solely on account of such ownership, to another and greatly more burdensome rule of taxation. In People *ex rel.* Equitable Gas Light Co. vs. Barker (144 N. Y., 94) this is held by the Court of Appeals to be the purpose and result of the statute. The court, after saying that the statutes require all property to be assessed at its actual value (p. 99) adds, "but it is well known that this duty cast upon assessors "is seldom performed, and that the taxation of real estate through- "out the state is generally upon an assessment which represents "but part of its actual value. Assessment at the full value is the "exception and not the rule. * * Real and personal property "are to be separately assessed. *In case of an individual assessed* "*for both, if the realty be undervalued, the loss cannot be made* "*up by adding it to the assessment of the personalty.* * * *In case* "*of corporations it may happen that an undervaluation in the assess-* "*ment of the real estate as such will be corrected in its valuation as* "*part of the capital, and so the undervaluation may be remedied, and* "*the whole property be subjected to taxation at its real value*" (pp. 99, 100).

It is settled that the courts will take judicial notice of the fact that real property generally is assessed below its

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actual value. As said in Cummings vs. National Bank, 101 U. S. 153, 162, "it is a matter of common observation that in "the valuation of real estate this rule" (of assessment at full value) "is habitually disregarded." The same thing is held in Dundee Co. vs. Parrish, 24 Fed. Rep., 197, 202; Railroad Co. vs. Board, 85 Fed. Rep., 302; Nashville Co. vs. Taylor, 86 Fed. Rep., 168; People *ex rel.* Sutphen vs. Feitner, 27 Misc., 384.

The construction given the statute by the Commissioners, therefore, imposes a more burdensome rule of taxation upon corporations than upon individuals by reason of ownership of similar property. The facts of this case fully establish this. If the relator were a natural person it would be assessed, by reason of owning this piece of real estate, at $600,000, and no more. Because it is a corporation it is, however, assessed by reason of such ownership in the sum of $365,000 more. The entire assessment for personal property arises from the fact that this piece of real estate is owned by a corporation and not by an individual—and that, too, although, as just said, the subject of assessment is *not* the franchises, but the *other* property of the corporation (People *ex rel.* Union Trust Co. vs. Coleman, 126 N. Y., 433; People *ex rel.* Manhattan Co. vs. Barker, 146 N. Y., 304, 312; s. c., 152 N. Y., 417, 453).

If the relator were an individual it would not be subject to this assessment. It is, therefore, obvious that the relator is subjected by reason of owning this piece of property to a rule of taxation more onerous than that which would apply if it were an individual.

SECOND.

The action of the Commissioners deprives the relator of the equal protection of the laws.

The Fourteenth Amendment to the Constitution of the United States provides (Section 1) that "no state shall * * deny to any "person within its jurisdiction the equal protection of the laws."

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This prohibition is binding alike upon all branches of the state government (Blake vs. McClung, 172 U. S., 239, 260; Abbott vs. Tacoma, 175 U. S., 409, 413), and it has been repeatedly held that corporations are persons within its meaning (Santa Clara County vs. Southern Pacific Co., 118 U. S., 394; Pembina Co. vs. Pennsylvania, 125 U. S., 181; Missouri Co. vs. Mackey, 127 U. S., 205; Home Ins. Co. vs. New York, 134 U. S., 594, 606; Charlotte Railroad Co. vs. Gibbes, 142 U. S., 386, 391; Gulf Co. vs. Ellis, 165 U. S., 150, 154; Smyth vs. Ames, 169 U. S., 466; Western Union Co. vs. Myatt, 98 Fed. Rep., 335; Hargraves Mills vs. Harden, 25 Misc., 665). Obviously a statute which should tax one person at a greater rate than another by reason of ownership of property identically similar in character, would deny to the person thus taxed at the greater rate the equal protection of the laws, and would, therefore, be unconstitutional.

Classification for purposes of taxation, in order to be constitutional, must distinguish between different kinds of property, not between different ownership of the same kind of property (San Bernardino Co. vs. Southern Pac. R. R., 118 U. S., 417, 422; Gulf Co. vs. Ellis, 165 U. S., 150, 165; Western Union Co. vs. Indiana, 165 U. S., 304; Magoun vs. Illinois Bank, 170 U. S., 283, 294, 301; County of San Mateo vs. Southern Pac. R. R. Co., 13 Fed. Rep., 722, 737, 744; County of Santa Clara vs. Southern Pac. R. R., 18 Fed. Rep., 385, 408, 409, 429; affirmed in 118 U. S., 394; Northern Pac. R. Co. vs. Walker, 47 Fed. Rep., 681, 685; Fraser vs. McConway Co., 82 Fed. Rep., 257; Matter of McPherson, 104 N. Y., 306, 318; Commonwealth vs. Edgerton Coal Co., 164 Pa. St., 284).

> The constitutional provision "means that no person or "class of persons shall be denied the same protection of the "laws which is enjoyed by other persons or other classes "in the same place and under like circumstances." (Missouri vs. Lewis, 101 U. S., 22, 31).
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> "The rule of equality * * requires the same means "and methods to be applied impartially to *all* the constitu- "ents of each class, so that the law shall operate equally "and uniformly upon all persons in similar circumstances." (Kentucky Railroad Tax Cases, 115 U. S., 321, 337; to the same effect is Barbier vs. Connolly, 113 U. S., 27, 32).

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It is true that this court has recognized the power of the states to select corporations as a particular class for taxation *upon their franchises.* In each instance, however, the tax has been upheld upon the ground that a state legislature can impose any burden it sees fit upon the *corporate franchise, license or privilege* which it creates and confers, and that such legislation is "not open to objection if all such bodies are treated alike "under similar circumstances and conditions, in respect to the *privi-* "*leges* conferred upon them and the *liabilities* to which they are "subjected" (Home Ins. Co. vs. New York, 134 U. S., 594, 606, 607; Kentucky Railroad Tax Cases, 115 U. S., 321, 337; Maine vs. Grand Trunk Co., 142 U. S., 217, 229; Plummer vs. Coler, 178 U. S., 115, 128). This court has adjudged also that the states may select railroad property as a class of property to be taxed separately because of its peculiar and inherent nature and its essential difference from other property (Kentucky Railroad Tax Cases, 115 U. S., 321, 337, 339; Columbus Southern Co. vs. Wright, 151 U. S., 470).

But these cases have no present application, because the assessment is conclusively held not to be an assessment upon franchises (People *ex rel.* Union Trust Co. vs. Coleman, 126 N. Y., 433; People *ex rel.* Manhattan Co. vs. Barker, 146 N. Y., 304, 312; s. c., 152 N. Y., 417, 453); nor is it upon any particular species of property, but generally upon the property of corporations. And it is elementary that when a method of taxation is contrary to constitutional principles, it is no more permissible because the subject of it to a corporation, either foreign, (Gloucester Ferry Co. vs. Pennsylvania, 114 U. S., 196, 204) or domestic (Philadelphia Co. vs. Pennsylvania, 122 U. S., 326, 344). Any discrimination based upon mere personality is contrary to the amendment (Gibson vs. Mississippi, 162 U. S., 565). "It is apparent that the mere fact of classification is not "sufficient to relieve a statute from the reach of the equality clause "of the Fourteenth Amendment, and that in all cases it must ap- "pear not only that a classification has been made, but also that it "is one based upon some reasonable ground—some difference which "bears a just and proper relation to the attempted classification and "is not a mere arbitrary selection" (Gulf Co. vs. Ellis, 165 U. S., 150, 165, 166; Western Union Co. vs. Indiana, 165 U. S., 304). "The question always is, when a classification is made, whether

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"there is any reasonable ground for it, or whether it is only and "simply arbitrary, based upon no real distinction and entirely un- "natural" (Nicol vs. Ames, 173 U. S., 509, 521).

Accordingly, it is settled by authority that the method of assessment employed here violates a constitutional requirement of uniformity in taxation. In Cummings vs. National Bank, 101 U. S., 153, 157, 158, it was shown that assessors adopted a uniform rule by which they assessed real estate at one-third of its value, but bank shares at their full value. The constitution required uniform taxation. The court said that, "when a rule or system of "valuation is adopted by those whose duty it is to make the as- "sessment, which is designed to operate unequally and to violate a "fundamental principle of the Constitution, and when this rule is "applied not solely to one individual, but to a large class of indi- "viduals or corporations, equity may properly interfere to restrain "the operation of this unconstitutional exercise of power." Of course the principle is applicable equally when the objectionable exercise of power is sought to be reviewed directly, as in the present proceeding. These principles are recognized also in National Bank vs. Kimball, 103 U. S., 732; Supervisors vs. Stanley, 105 U. S., 305; Stanley vs. Supervisors, 121 U. S., 535, 550; Albuquerque Bank vs. Perea, 147 U. S., 87.

> In Taylor vs. Louisville Co., 88 Fed. Rep., 350, 60 U. S. App., 166, affg. 86 *Id.*, 168, the constitution of Tennessee declared that all property should be taxed "according to its value, * * so that "taxes shall be equal and uniform throughout the state." It appeared that it was the uniform practice throughout the state to assess real property at not exceeding seventy-five per cent of its value. It was held that an assessment of railroad property at its full value violated the constitutional requirement of uniformity. The same thing is held in Railroad and Telephone Cos. vs. Board, 85 Fed. Rep. 302; Cocheco Co. vs. Strafford 51 N. H., 455; Randell vs. Bridgeport, 63 Conn., 321; *Ex parte* Fort Smith Co., 62 Ark., 461; Board of Bureau County vs. Chicago R. R. Company, 44 Ill., 229; Chicago Co. vs. Board, 54 Kans., 781.

There is no case in this court sustaining a statute imposing a tax upon the *property* of corporations (as distinguished from a tax upon their *franchises*), at a higher rate than that laid upon similar property of natural persons, and the cases in the state

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courts distinctly rule that such a statute cannot be upheld (Mayor vs. Stonewall Insurance Co., 53 Ala., 570, 580, 581; Board of Bureau Co. vs. Chicago Railroad Co., 44 Ill., 229; Standard Insurance Co. vs. Assessors, 95 Mich., 466; State Board of Assessors vs. Central R. R. Co., 48 N. J. Law, 146, 304; Fox's Appeal, 112 Pa. St., 337, 353; Nichols vs. Walter, 37 Minn., 264, 272; Vermont Loan and Trust Co. vs. Whithed, 2 No. Dak., 82, 94).

Clearly these rules cover the present case; for a distinction is made against the relator by taxing its property other than franchises at an unequal rate merely *because* it is a corporation and not a natural person. That is a rule of classification which violates the constitutional guaranty by depriving the relator of the equal protection of the laws.

It, therefore, follows that when a corporation has no assessable *personal* property, as is the case with the relator, it can no more be taxed for *personal* property than can an individual similarly situated. For that would deny to it protection of the laws equal to that enjoyed by natural persons, and would construe the statute so as to render it unconstitutional.

CONCLUSION.

The judgment should be reversed.

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Counsel for plaintiff in error.

STATUTES OF THE STATE OF NEW YORK.

1 Revised Statutes, 389, Sec. 1, 9th ed., p. 1680.

"Every person shall be assessed in the town or ward "where he resides when the assessment is made, for all lands "then owned by him within such town or ward, and occu- "pied by him, or wholly unoccupied."

Id. Sec. 17, 9th ed., p. 1685.

"All real and personal estate liable to taxation shall be "estimated and assessed by the assessors at its full and true "value, as they would appraise the same in payment of a "just debt due from a solvent debtor."

Laws of 1857, Chapter 456, Section 3.

"The capital stock of every company liable to taxation, "except such part of it as shall have been excepted in the "assessment roll, or as shall have been exempted by law, "together with its surplus profits or reserved funds, exceed- "ing ten per cent of its capital, after deducting the assessed "value of its real estate, and all shares of stock in other cor- "porations, actually owned by such company, which are "taxable upon their capital stock under the laws of this "state, shall be assessed at its actual value and taxed in the "same manner as the other personal and real estate of the "county."

Consolidation Act, Chapter 410, Laws of 1882, Sec. 814:

"It shall be the duty of the deputy tax commissioners, "under the direction of the commissioners of taxes and "assessments, to assess all the taxable property in the "several districts that may be assigned to them for that "purpose by said commissioners, and they shall furnish to "them, under oath, a detailed statement of all such property "showing that said deputies have personally examined each "and every house, building, lot, pier, or other assessable "property, giving the street and ward map number of such "real estate embraced within said districts, together with "the name of the owner or occupant, if known; also, in their "judgment, the sum for which such property, under ordinary "circumstances, would sell, with such other information, in "detail, relative to personal property or otherwise, as the "said commissioners may, from time to time, require. Such "deputies shall commence to assess real and personal estate "on the first Monday of September in each and every "year."